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JONES, WALKER, WAECHTER, POITEVENT, CARRERE
& DENEGRE, L.L.P.
5TH FLOOR, FOUR UNITED PLAZA
8555 UNITED PLAZA BOULEVARD
BATON ROUGE, LA 70809

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 03/31/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/775,451

Applicant(s)

LINCECUM, HOWARD LYNN

Examiner

Walter B Aughenbaugh

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09 January 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-4, 6-11, 18 and 19 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-4, 6-11, 18 and 19 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____.
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) Other: _____

DETAILED ACTION

Acknowledgement of Applicant's Amendments

1. The amendments made to claims 1 and 6-11 made on pages 1-2 and 10-11 of Applicant's Amendment (Paper #9) have been received and considered by Examiner.
2. New claims 18 and 19 given on page 2 of Applicant's Amendment (Paper # 9) have been received and considered by Examiner.
3. Applicant's cancellation of claims 5 and 12-17 in Applicant's Amendment (Paper # 9) has been acknowledged by Examiner.

REPEATED OBJECTIONS

4. The objection to the Abstract is repeated for the reasons previously made of record in page 3, paragraph 5 of Paper #6.

WITHDRAWN REJECTIONS

5. The 35 U.S.C. 112 rejection of claims 5, 6, 8 and 9 made of record in pages 3-4, paragraph 7 of Paper #6 has been withdrawn due to Applicant's amendments in Paper #9.
6. The 35 U.S.C. 112 rejection of claim 10 made of record in page 4, paragraph 7 of Paper #6 in regard to the indefiniteness of the "exact nature of the curling force and the resulting structure of the mouth of the bag" has been withdrawn due to Applicant's amendments in Paper #9.
7. The 35 U.S.C. 102 rejection of claims 1-4, 7 and 9 as anticipated by Cowan made of record in pages 4-5, paragraph 9 of Paper #6 has been withdrawn due to Applicant's amendments in Paper #9.

Art Unit: 1772

8. The 35 U.S.C. 103 rejection of claim 5 over Cowan made of record in pages 8-9, paragraph 12 of Paper #6 has been withdrawn due to Applicant's cancellation of claim 5 in Paper #9.
9. The 35 U.S.C. 103 rejection of claim 5 over Sugimoto et al. made of record in pages 6-7, paragraph 11 of Paper #6 has been withdrawn due to Applicant's cancellation of claim 5 in Paper #9.
10. The 35 U.S.C. 103 rejection of claim 6 over Cowan made of record in pages 8-9, paragraph 12 of Paper #6 has been withdrawn due to Applicant's arguments in Paper #9.
11. The 35 U.S.C. 103 rejection of claims 8 and 10 over Cowan in view of Matsunaga et al. made of record in pages 9-10, paragraph 13 of Paper #6 has been withdrawn due to Applicant's amendments in Paper #9.
12. The 35 U.S.C. 103 rejection of claim 9 over Sugimoto et al. made of record in pages 6-8, paragraph 11 of Paper #6 has been withdrawn due to Applicant's amendments in Paper #9.
13. The 35 U.S.C. 103 rejection of claim 11 over Cowan in view of Speckman made of record in page 11, paragraph 14 of Paper #6 has been withdrawn due to Applicant's amendments in Paper #9.

REPEATED REJECTIONS

14. The 35 U.S.C. 112 rejection of claim 10 in regard to the lack of antecedent basis for the limitation "said second plastic material" is repeated for the reasons previously of record in page 4, paragraph 7 of Paper #6.
15. The 35 U.S.C. 103 rejection of claims 1-4, 6-8 and 11 is repeated for the reasons previously of record in pages 6-8, paragraph 11 of Paper #6.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

16. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

17. Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "higher shrinkage" is indefinite. What are the dimensional units of "shrinkage"? How is the "shrinkage" of the first plastic material different from the "shrinkage" of the second plastic material? Is the shrinkage a rate of change in length, or an absolute change in length?

Claim 10 recites the limitation "said higher shrinkage" in claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

18. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto et al. in view of Patel et al.

Sugimoto et al. teach the bag having an outer layer that has a density which is lower than the density of the inner layer discussed in paragraph 11 of Paper #6, pages 6-8. Sugimoto et al. teach that the high density polyethylene-based resin layer imparts slipperiness, strength and stiffness to the multi-layer film, and when the film is used as a bag, the opening properties of the bag are improved and facilitates both removing an article from the bag and placing an article in the bag (col. 4, lines 51-56). Bags necessarily have a mouth. Sugimoto et al. fail to explicitly

Art Unit: 1772

teach that the first plastic material (inner layer) has a given shrinkage and the second plastic material (outer layer) has a higher shrinkage than the first plastic material thereby tending to separate opposing inside surfaces at the mouth of the bag away from one another. Patel et al., however, disclose that polyolefin film shrinkage depends on film density, and that film shrinkage is increased at lower density (col. 2, lines 26-29). Therefore, one of ordinary skill in the art would have recognized that the outer layer that has a density which is lower than the density of the inner layer taught by Sugimoto et al. has a higher shrinkage than the shrinkage of the higher density inner layer as taught by Patel et al., and one of ordinary skill in the art would have therefore recognized that the opposing inside surfaces at the mouth of the bag would tend to separate from one another due to the higher shrinkage of the outer layer (and equivalently, that the higher shrinkage of the outer layer exerts a curling force on the inner layer as claimed in claim 10).

It would have been obvious to one of ordinary skill in the art at the time the invention was made that the outer layer that has a density which is lower than the density of the inner layer taught by Sugimoto et al. has a higher shrinkage than the shrinkage of the higher density inner layer as taught by Patel et al. and that the opposing inside surfaces at the mouth of the bag would tend to separate from one another due to the higher shrinkage of the outer layer.

19. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto et al.

In regard to claims 18 and 19, Sugimoto et al. teach the bag as discussed in paragraph 11 of Paper #6, pages 6-8. In regard to the claimed dart impact strength range of between approximately 70 and 200 grams per mil, it would have been obvious to one of ordinary skill in

the art at the time the invention was made to have used a middle polymer film layer that has a dart impact strength of between approximately 70 and 200 grams per mil depending on the particular desired end result, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art in the absence of unexpected results. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

ANSWERS TO APPLICANTS ARGUMENTS

20. Applicant's arguments on pages 3-4 of Paper #9 regarding the 35 U.S.C. 103 rejection of claims 1-9 and 11 over Sugimoto et al. (Paper #6, paragraph 6) have been fully considered but they are not persuasive

Applicant's reliance on MPEP §2143.01, which "prohibits modifications of references where such modifications would render the prior art being modified unsatisfactory for its intended purpose" is inappropriate in the instant application. Whereas MPEP §2143.01 applies to devices that are used for entirely different purposes (i.e. blood filtering and removing gas and water from gasoline), Sugimoto et al. and Applicant actually share a common purpose. Sugimoto et al. and Applicant's purpose is to enable slippage between the bag and an article. In the case of Sugimoto et al., the coefficient of friction (COF) of the outer layer of the bag of Sugimoto et al. is low (lower than 0.35) to enable the bag to slip easily from the buffering material of Sugimoto et al. In the case of Applicant, the COF of the inner layer of the bag is low to enable the material to slip easily over the contents of the bag, as the specification of Applicant clearly establishes that it is important for the plastic layer of a bag that is in contact with furniture to have a low COF so that "the reduced COF of the bag material allows the bag to slip onto the furniture more easily" (page 2, lines 1-6). Therefore, Sugimoto et al. and Applicant are dealing

Art Unit: 1772

with the same problem, i.e., the selection of a polymeric composition to be formed into a film that is in contact with an article to achieve a desired degree of slippage between the film and the article as quantified by the COF of the film. Therefore, one of ordinary skill in the art is indeed motivated to swap inner and outer layers in the film of Sugimoto et al. (which would entail merely flipping the bag of Sugimoto et al. inside-out) at least for the goal of achieving a low degree of slippage on the inside of the bag so that an article may easily slip along the inside of the bag as opposed to along the outside of the bag as taught by Sugimoto et al. Further motivation is derived from the fact that the both Sugimoto et al. and Applicant aim to achieve a desired degree of grippage with the layer on the side of the multilayer films of Sugimoto et al. and Applicant that is opposite the low COF layer. The intended use for a structural limitation, namely, a high COF film, whether the use is to prevent scratching in the case of Sugimoto et al. or to achieve suitable adhesion between the layer and adhesive labels as in the case of Applicant (page 2, lines 4-10), is not a patentable distinction, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987). Furthermore, a switch of the inner and outer layers in the film of Sugimoto et al., as one of ordinary skill in the art is clearly motivated to do in order to achieve a bag with a smooth inner surface as established above, yields a bag with inner and outer layers with respective COFs of less than 0.35 and greater than 0.4, ranges which either entirely encompass the claimed range of Applicant in the case of the low COF range, or encompass the majority of the claimed range in the case of the low COF range; therefore, a reversal of the inner and outer layers of the bag of Sugimoto et al. yields the bag of Applicant.

The goals of Sugimoto et al. that Applicant points to as to why there is no motivation to make the modifications to arrive at the bag of Applicant, i.e., avoiding rub damage and avoiding difficulty of slippage of the buffering material, are merely intended uses which do not constitute a patentable distinction, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

21. Applicant's arguments on pages 5-8 of Paper #9 regarding the rejections based on Cowan (Paper #6, paragraphs 9 and 12-14) are rendered moot to the withdrawal of the rejections based on Cowan in this Office Action.

Examiner considered the "Declaration of Ronald A. Mason". The withdrawal of the rejections based on Cowan was due to Applicant's amendments and arguments as established in the "*WITHDRAWN REJECTIONS*" section of this Office Action; the "Declaration of Ronald A. Mason" was not the basis for the withdrawal of the rejections based on Cowan in this Office Action.

Conclusion

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 1772

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

wba
03/21/03 WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/24/03